

Before the Board of Zoning Adjustment, D.C.

PUBLIC HEARING--Oct. 13, 1965

Appeal #8400 Hayden Const. Co. Inc. appellant.

The Zoning Administrator District of Columbia, appellee.

On motion duly made, seconded and unanimously carried the following Order was entered on October 19, 1965:

ORDERED:

That the appeal for a variance from the provisions of Section 7202 of the Zoning Regulations to permit waiver of off-street parking for three dwellings at 3030-34-38 O Street, S.E., lots 117, 118 and 119, square 5543, be denied conditionally.

(1) From the records and the evidence adduced at the hearing, the Board finds that a waiver of these parking spaces cannot be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the zoning regulations and map.

(2) The Board finds that by reason of unusual topography and grades on this property a waiver of the provisions of Sections 7204 Size of parking space and Section 7205 Location of parking spaces to permit parking within the side yard of the dwellings.

(3) There was objection to the granting of this appeal registered at the hearing, which related to a complete waiver of off-street parking.

This Order shall therefore be subject to the following:

- (a) The request for a waiver of three off-street parking spaces is denied and appellant is required to provide the parking spaces within the side yards.

Before the Board of Zoning Adjustment, D.C.

PUBLIC HEARING -- October 12, 1966

Appeal No. 8400 Hayden Construction Co., Inc., appellant.

The Zoning Administrator of the District of Columbia, appellee.

On motion duly made, seconded and unanimously carried, the following Order was entered at the meeting of the Board on October 17, 1966.

EFFECTIVE DATE OF ORDER -- Jan. 13, 1967

ORDERED:

That the appeal for a variance from provisions of Section 7202 of Zoning Regulations to permit waiver of off-street parking for three dwellings at 3030, 3034, and 3038 O Street, SE., lots 117, 118, and 119, square 5543, be vacated for lack of jurisdiction.

FINDINGS OF FACT:

(1) By petition (Exhibit R-1) received at the Zoning Office on July 15, 1966 three separate owners of premises 3024, 3028, and 3038 O Street, SE. (known as lots 119, 118, and 117, in square 5543 respectively) requested the Board of Zoning Adjustment to set aside its Order granting a variance from Section 7202 of the Zoning Regulations to permit waiver of off-street parking for the subject dwellings.

(2) On October 13, 1965 the Board held public hearings and considered the appeal filed by Hayden Construction Co., Inc. for the above-mentioned variance.

(3) On October 18, 1965 the Board denied the appeal for a variance from the off-street parking requirement and the Board made the following Order:

"The request for a waiver of three off-street parking spaces is denied and appellant is required to provide the parking spaces within the side yards."

(4) On November 1, 1965 Hayden Construction Co. notified the Board that it had new and additional evidence in the form of topographic drawings and photographs showing the conditions prevailing at the subject addresses making it impossible to provide side yard

parking, not only from the practical viewpoint, but as a matter of compliance with the requirements of the D.C. Department of Highways and Traffic.

(5) The Board, by letter dated November 4, 1965, advised Hayden that it would be permitted to present the matter of new evidence at the November 17, 1965 public hearing.

(6) On November 24, 1965 the Board advised Hayden Construction Co. that as a result of new evidence at the public hearing of November 17, 1965 a waiver of off-street parking spaces for the subject premises had been granted.

(7) The record contains:

(a) Exhibit R-1a, a copy of a deed made November 4, 1965 from Hayden to Stokes et ux for lot 117, square 5543, and recorded November 19, 1965 in Liber No. 12516 at Folio 618. Exhibit R-1b is a sales contract between the same parties pertaining to the same property and dated May 21, 1965.

(b) Exhibit R-1c, a copy of a deed made November 3, 1965 from Hayden to Freelon et ux for lot 119, square 5543, and recorded November 9, 1965 in Liber No. 12510 at Folio 411. Exhibit R-1d is a sales contract between the same parties pertaining to the same property and dated April 6, 1965.

(c) Exhibit R-1e, a copy of a deed made November 15, 1965 from Hayden to Lee et ux for lot 118, square 5543, and recorded November 19, 1965 in Liber 12516 at Folio 610. Exhibit R-1f is a sales contract between the same parties pertaining to the same property and dated April 26, 1965.

(8) By letter dated July 26, 1966 (Exhibit R-2), the Board notified the attorney for the complainants that the Board considered them as "persons aggrieved" as that term is used in Section 8 of the Zoning Act, June 20, 1938, and that each of them could file an appeal to the Board of Zoning Adjustment.

(9) At the public hearing held September 14, 1966, attorney for the complainants appeared and repeated his request of July, 1966 that the waiver be set aside on the ground that the appellant, Hayden Construction Co., was not the party in interest at the time of the Board's action waiving the off-street parking space for the subject dwellings.

(10) It is asserted that prior to time of the waiver the contractor-builder perpetrated a fraud on the Board inasmuch as the complainants had signed contracts to purchase the premises, which were modeled after another house already built and having off-street parking.

(11) By letter dated October 3, 1966, the Board instructed Hayden Construction Co., Inc., the appellant, to appear at the October 12, 1966 public hearing "prepared to show cause why the waiver heretofore granted should not be revoked."

(12) Hayden Construction Co. was represented at the October 12, 1966 public hearing and characterized the topographical conditions of the subject sites which was presented as new evidence after the original hearing as a mistake in fact subject to remedy by a waiver of off-street parking requirements.

(13) Hayden maintains that it had the authority and an obligation to request the waiver at the time of the original hearing and at the subsequent proceedings before the Board.

OPINION:

The Board is of the opinion that this proceeding should be disposed of by deciding only the question of jurisdiction raised by the parties. We conclude that the Board was without jurisdiction when it decided this case the second time on November 24, 1965. The question presented at the November 17, 1965 public hearing was raised by a petitioner who was not in fact the legal owner of the subject properties. In addition, the owners of the subject properties were not notified of the hearing and therefore had no opportunity to participate in the proceeding before the Board of Zoning Adjustment.

The Order of November 24, 1965 is therefore vacated on the ground that the Board had no jurisdiction to decide the issues.